

investigating officer's comments, if any.

(c) If the Administrative Law Judge grants the petition, the hearing is reopened to allow the offer of the new evidence described in the petition.

(d) If the Commandant grants the petition, the case is remanded to the Administrative Law Judge with directions to reopen the hearing.

(e) When the petition is granted, the Administrative Law Judge withdraws the original decision and renders a new one based on the record of the original hearing and the new evidence received.

(f) The petition, the investigating officer's comments, the Administrative Law Judge's or Commandant's decision on the petition, and the additional evidence will be appended to the original hearing record.

**§ 5.607 Appeal from action on petition.**

(a) If the petition to reopen the hearing is denied by the Administrative Law Judge, the respondent may appeal to the Commandant within 30 days from the date of service of the denial of the petition. The review by the Commandant on this appeal will be limited to the issues raised by the petition. Other grounds on appeal must be in accordance with subpart J of this part.

(b) If the petition to reopen the hearing is granted and a previous finding of *proved* is affirmed by the Administrative Law Judge, the respondent may appeal the decision as provided for in subpart J of this part.

**Subpart J—Appeals**

**§ 5.701 Appeals in general.**

(a) A respondent against whom a finding of *proved* has been rendered may appeal such decision to the Commandant.

(b) The hearing transcript, together with all papers and exhibits filed, shall constitute the record for decision on appeal. The only matters which will be considered by the Commandant on the appeal are:

- (1) Rulings on motions or objections which were not waived during the proceedings;
- (2) Clear errors on the record;
- (3) Jurisdictional questions.

(c) In the preparation of an appeal, the investigating officer's and the Administrative Law Judge's assistance to the appellant will extend only to the point of providing information as to the applicable regulations.

(d) If the respondent requests a copy of the transcript in the notice of appeal and the hearing was recorded or transcribed at government expense, the transcript will be provided upon payment of the fees prescribed in 49 CFR 7.95. If the services of a government contractor were utilized, the transcript must be obtained under the provisions of 49 CFR 7.99.

**§ 5.703 Procedures for appeal.**

(a) An appeal may be taken only by filing a written notice of appeal within 30 days after service of the complete written decision. This notice of appeal must be filed with the Administrative Law Judge who heard the case or with any Officer in Charge, Marine Inspection for forwarding to the Administrative Law Judge.

(b) The notice of appeal must:

- (1) Be typewritten or written legibly;
  - (2) Be addressed to the Commandant;
- and

(3) Set forth the name of the appellant, the number and description of the license, certificate and/or document involved, and the name of the Administrative Law Judge who heard the case.

(c) The completed appeal must be submitted to the Commandant, U.S. Coast Guard (G-MOA), 2100 2nd St. SW., Washington, DC, 20593 within sixty days after service of the complete written decision, or if a transcript was requested, within 60 days after receipt of the transcript. After this time has elapsed, anything received will not be considered as a part of the appeal record unless an extension of time has been granted in writing by the Commandant and the extended time limit has been met.

(d) The appeal must contain a brief or memorandum setting forth legal and other authorities relied upon. All grounds for appeal or exceptions to the Administrative Law Judge's decision must be described with particularity.

(e) No appeal will be accepted in the case of a revocation or outright suspension if the respondent has not complied